



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, ERP, RP RR, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The landlords had also made an application for dispute resolution seeking an Order of Possession and a monetary order for unpaid rent or utilities, which was joined to be heard with the tenants' application.

I found that the majority of the tenants' application was not sufficiently related to the landlord's application, and the landlord's application, along with the tenant's application for an order cancelling the notice to end the tenancy were severed, and my final order with respect to the notice to end the tenancy and those applications was provided to the parties on October 15, 2015.

The hearing did not conclude on the first day scheduled and was adjourned for continuation from time-to-time. Both tenants and one of the named landlords attended on each day, with the exception of the final day of the hearing. On the final day of the hearing, the landlord attended, but neither of the tenants attended. No further testimony was heard on the final day; the line remained open while the phone system was monitored for 10 minutes and the only participant who joined the call was the landlord. The landlord was advised that my Decision would be based on evidence and testimony already heard.

Both parties provided evidentiary material before and after the hearing had commenced and were advised that no further evidence would be considered. Only the evidence that

was received by me in accordance with the Residential Tenancy Branch Rules of Procedure is considered in this Decision.

The landlord and one of the tenants were warned on several occasions about interruptions but both continued to interrupt each other, the witnesses and me.

The tenants made 3 applications for Summonses to be issued to witnesses and then abandoned each application.

The tenants and the landlord each gave affirmed testimony. The tenants called 1 additional witness and the landlord called 4 witnesses, all of whom gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses. Only the testimony that I find relevant to the remaining issues is included and considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for the cost of emergency repairs?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established that the landlords should be ordered to make emergency repairs for health or safety reasons?
- Have the tenants established that the landlords should be ordered to make repairs to the unit, site or property?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This fixed-term tenancy began on July 16, 2015 and expires on July 15, 2016, thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,600.00 per month is payable on the last day of each month for the following month. The rental unit is a house with no other suites or tenants. The tenants are a mother and her adult son.

The first tenant testified that the tenants owe no rent to the landlord due to the landlord's failure to deal with mold, and the tenant's failure to pay rent is thereby justified. The tenants paid \$1,600.00 on July 17, 2015 and another \$1,600.00 on July 31, 2015. The first payment was for half a month's rent for July and \$800.00 for the security deposit. The second payment was for August's rent, but the tenants haven't

paid any rent since July 31, 2015. The tenant explained that she signed a tenancy agreement for a home, but the tenants are not able to live, sleep or eat there. That is the intent of paying money to a landlord, but the landlord knew of defects in the home, took the tenant's money and gave nothing in return other than a substandard house. As far as the tenant is concerned, the rent paid to the landlord amounts to pre-paid rent to the end of the fixed term of the tenancy because it's a toxic cesspool. The tenant refuses to give up occupancy for fear the landlord will rent it to someone else, and he's violent.

The tenants claim the cost of emergency repairs, being air filters and masks, mold testing, a pro-lab kit, pro-lab analysis, Hepa filter and laundry room hoses. The landlord had the furnace filter replaced previously, but the tenant bought a new one because it was better. The tenant also obtained permission from the landlord to hook up a washer and the hoses were necessary. All receipts were given to the landlord and the tenants made several attempts to have the landlord fix the issues of mold in the rental unit.

The tenant further testified that the rental unit does not meet the health and safety standards required by law, and each time she or her son entered they would get sick. The tenant told the landlord many times that the mold is a danger to the tenants' health, but the landlord denied there was ever a problem and was finally forced to do something, but it was short of what was required.

In early August the tenant noticed itching and welts all over her body and has provided photographs. Also provided is a doctor note and the tenant testified that the doctor said the tenant is allergic to something. Then both tenants started to experience chronic fatigue, headaches, nausea, dizziness, and brain fog, getting worse and worse and didn't know the true cause. The tenant went to emergency 2 or 3 times to get to the bottom of it and testified that whenever the tenants left the home they felt better, and used masks at the suggestion of a mold specialist.

The tenant notified the landlord believing the landlord would be cooperative and would have some interest, and the tenant gave the landlord the business card of the mold specialist. The tenant also called the mold specialist who checked it and right away said it was definitely a mold issue on the ceiling. He went through the rest of the house and found stains in various places in the basement showing water issues had taken place prior to this tenancy. A photograph provided also shows a fan on the ceiling, and the tenant believes the landlord knew of the problem prior. The mold specialist told the tenant that the landlord was obstructing and said that the landlord was going to get someone to spray instead. The tenant said that she would pay for air testing and refused entry for sprayers who were sent by the landlord to cover up evidence. After the air samples were taken, they were allowed entry.

When remediation work started, the landlord would only approve work on the garage, not in the home or on the deck or in the kitchen. Everything looked great, but horrific things that caused health issues were covered up and the landlord obstructed by halting any fixing of the job and did so throughout, including convincing the mold specialist to hold off sending samples to the lab. The landlord interfered with the contract the tenant had with the mold specialist. Two air scrubbers were placed in the home which did help, but the landlord wouldn't pay for them, so they were eventually removed. The tenants wore masks continually after they were taken out of the home.

The tenant also testified that the flooring contractor was told by the landlord to not do remediation work except on the deck, meaning no fixing of the kitchen, the mold was going to stay, the work was not going to get done properly but be covered up. The tenant told the flooring contractor about the mold, and the contractor refused to touch it stating that if he did, he would be an accomplice, and that he would tell the landlord that it wouldn't be repaired until it was done properly.

On September 22, 2015 a carpenter was sent to the rental unit by the landlord to put on the new deck, and the tenant told the carpenter about remediation work that need to be done. By this time, the tenant had alerted the City. The City had advised that they don't have a mandate to deal with residential homes or have any authority to deal with safety issues. Interior Health said the same with respect to a private residential home. The City told the tenant to talk to Work Safe, which she did.

Eventually, the carpenters must have felt compelled to do some further work, and were allowed by the landlord to start tearing apart some of the walls and flooring. However, some old wood was left in and was reinforced with new boards, not replaced.

The tenant told the landlord that she wanted test results, and that it's a landlord's responsibility to get the testing done, but the landlord wanted to spray over it to cover up evidence, and told the tenants to move out.

The tenant told the landlord that he owed the tenants money and that the rent wasn't paid so that the landlord could make the tenants sick. The tenants claim back all rent paid for July and August, which the landlord has failed to pay. The tenant has not slept in her bed for 3 months. A landlord is required to provide another safe location where a tenancy has health issues, but failed to do that and the tenants' enjoyment of the home was hugely diminished by mold.

The tenants claim \$100.00 per day less the rental amount till the end of the fixed term which would amount to \$800.00 for July, \$1,500.00 for August, \$1,400.00 for

September, \$1,500.00 for October. Alternatively the tenants claim \$25,000.00, the maximum claimable under the *Residential Tenancy Act*.

The second tenant testified that he resides in the rental unit with his mother and has a music studio set up there but didn't realize that his name was on the tenancy agreement.

The house is moldy and the tenant's Crohn's Disease flared up, and he suffered brain fog, fatigue and his lungs were acting up. The tenants are not sleeping in the rental unit.

The tenant also testified that rather than moving out, the tenants want justice and need compensation for the mold in the rental unit.

The tenant also testified that the tenants were trying to sue the mold specialist for covering up evidence, and that he wrote in chalk in the driveway of the rental unit that the mold specialist commits fraud because he promised to give samples to the lab but didn't.

The tenant's witness testified that she was calling in from Greece.

The witness has been a landlord for about 20 years and is now retired. The witness was at the rental unit and has stayed over night. A lot of mold was detected on the 2 X 10's in the garage as well as on the deck. The witness was there for 3 days and had to leave due to mold spores in the house causing the witness to become quite ill. The witness did not have a mask to wear and the tenants always wore them. After about an hour or 1 ½ hours of leaving, the witness felt better. The house was in absolute bad condition, with calcium deposits in the shower, around windows and painting hasn't been done in 10 years. The air return is coated with stuff and a lot of the furnace vents are broken.

The witness was also present the whole day that demolition was taking place and when the fellow from Work Safe arrived. The witness asked his opinion and he said there was definitely mold in the house. The witness also noticed some workers trying to cover up mold with fresh wood.

The witness also testified that \$800.00 was placed in the tenant's account by the witness to pay for the lab testing. The tenant had the money to pay for it, but that was a major problem because the tenants were not getting the information needed.

The landlord testified that on August 18, 2015 the tenant called about a gas leak, stating that she was in hospital and the doctor said she was sick from the gas leak. The

landlord went to the rental unit with a gas fitter and the tenant's son answered the door saying there was no gas leak and he was in the shower. The landlord and gas fitter checked the furnace and hot water tank, and no gas odour was detected. The tenant who had been in hospital arrived while the landlord and gas fitter were still at the rental unit and stated there might be mold in the garage, and the landlord agreed to return the following day to investigate.

The next day the tenant arrived at the landlord's place of business and advised of black mold in the garage. The landlord arrived on August 19, but the tenant would not allow the landlord to enter stating that only a certified mold expert was allowed to enter. The landlord told the tenant that he didn't have to hire a mold expert, but the landlord wanted to see it to assess it first. The tenant refused entry, so the landlord gave the tenant 24 hours notice to enter. The mold specialist was retained that day by the landlord.

The mold specialist met with the landlord at the rental unit on August 20, 2015 and advised that there was mold on the deck and in the garage, which is separate from the house and tightly sealed. He also inspected the attic thoroughly and there was no mold present and no leaks and the mold specialist has provided a letter to that effect. He sprayed the garage and deck with chemicals that removed the mold. The landlord lined up a contractor who started work around September 17 or 18. The rotten plywood was removed from the deck and sprayed as a precautionary measure. All work was conducted outside. No one could smell mold and it did not affect the inside of the house. They also removed the sliding door and took the extra step to ensure there were no other problems. The only mold was behind the gyprock in the garage which is sealed from the house by law. The floor was replaced on both sides of the wall as well as siding and plywood and nothing was wet.

The tenants had not previously complained to the landlord about mold, nor did previous tenants. The landlord testified that as soon as the landlords heard about it, they reacted right away and got restrictions from the tenant for lots of excuses. If the tenants were that concerned they would have let the landlords in to deal with it. They were willing to deal with it that day.

With respect to mold samples, the landlord testified that the landlords agreed to pay for spraying but not for testing. The tenant requested the test and the landlord does not know what the tenant told them.

With respect to photographs provided by the tenants, the landlord testified that the images are not mold but discolored wood. Also the City inspector approved it after the tenant called the City to complain.

The landlord's first witness (MM) testified that he is the mold specialist and owner of his company. He received a call from the tenant on August 20, 2015 or so asking the witness to see about mold. He spoke to the landlord and did a visual inspection of the rental unit on or about the 21st and found no visible mold in the house or the attic, but some in the garage. The witness figured out that the deck had been leaking over time which caused mold damage in the garage. He helped remove all drywall from the garage and sprayed it with anti-mold inhibitor and sealed the area with poly to eliminate exposure. The witness told the landlord that rotted lumber needed to be removed under the deck. The landlord replied that he was going to replace the deck and the lumber would also be replaced.

The witness also testified that mold needs heat and humidity to grow. Every house has mold spores unless they are fully sterile like a hospital. However, the spray applied by the witness killed the mold and poly prevented spores from spreading. The cause of the problem was the deck, but can't spread into the house because it's sealed off.

The witness further testified that the tenant asked the witness to take tests for the quantity of mold in the rental unit but because mold was only detected in the garage, a surface sample wasn't taken. Air samples were taken as requested by the tenant but the witness did not submit them to the lab for testing. The witness withdrew his services to the tenant after the tenant refused to allow the witness to retrieve his equipment, while the tenant's son was video taping him and the witness threatened to call police. The trust factor was lost and the tenant had advised that she could only pay about half the cost of the lab costs. The witness did not believe lab testing was necessary or that he'd get paid.

The landlord's second witness (CT) testified that he did some work for the landlord at the rental unit, and the landlord told him to fix what the problem was. The witness has been doing this type of work for 39 or 40 years.

The witness went to a hardware store with the landlord and was told to use a solution as a precaution in case there was mold. The witness sprayed some mold-free solution even though no mold was detected; the witness only detected wood rot, which was all outside the house. When wood rots, it turns black and disintegrates, and the spray was added as a precaution only. The witness could tell that the wood was rotted out, and that was removed.

The witness took all of the rotted wood of the home and put in new material. A sheet of plywood was rotted which extended about 18 inches into the kitchen, so rather than cutting it, the witness replaced the whole sheet, inside and out. The wall was re-built including the studs. The witness removed windows and replaced the patio door. Still

no mold was seen or smelled. The work took about a week and a half because a good section of the front of the house was removed and replaced with 2 X 6 boards, insulation, plywood, siding, patio door and the deck was re-surfaced.

The witness also testified that the building inspector showed up during the project and the witness explained what was going on. The building inspector said it was fine. Also, a fellow from Work Safe showed up, and the witness followed his direction to not work on the deck without a rail as a safety precaution. No orders were made.

The witness also testified that the whole deck top had to be replaced. The material had deteriorated, so it was torn out and new material, such as insulation and drywall were put in. He explained that it's better to do that to prevent problems in the future. The majority of the work was outside, but the witness had to go inside to drywall and replace the windows.

While at the rental unit, the witness testified that sometimes the tenants wore masks, but their company didn't. It seemed when someone showed up, the tenants put them on, but the witness didn't see a reason for it.

The landlord's third witness (RS) testified that he attended the rental unit to serve a 24 hour notice so that he could assess what work needed to be done but the tenant's son was "in his face" threatening to call the police.

The tenants tried everything to stop the work from getting done. They called Work Safe in an attempt to have the work area designated as unsafe, but it was fine. They also called a building inspector who also cleared everything.

The tenants were not wearing a mask when the witness first arrived on September 2, 2015 when the witness served the tenant with a notice to end the tenancy. One of the tenants put one on later in the afternoon but had not been wearing one all morning. When the witness served her with the notice, the tenant went upstairs to put one on and then returned downstairs.

The landlord's fourth witness (KC) testified that the tenant called asking the witness to attend to the rental unit to take air samples about 1 ½ or 2 months ago. The tenant stated that the witness was recommended to her and that she had concerns about wet walls and flooring and was getting sick due to mold.

The results of the samples were sent to Vancouver, and the tenant called the witness about it. The witness told the tenant that the cost was \$250.00, and advised that the sample came back as within a reasonable safety amount. The tenant sounded disappointed, and by her tone of voice, she didn't believe that. That result means there

was no issue of mold in the house. The witness has not heard from the tenant since and the witness has been sitting on the bill for over a month. The witness also testified that if the test results had been positive for unsafe mold amounts, he would have heard from the tenant.

The landlord has not asked the witness for the results and the witness has not provided them. The tenant has claimed that she is sick, but the tests came back safe. The landlord needed the witness to testify at this hearing, but the witness said he wouldn't get involved until he got paid, so the landlord paid for the samples.

Analysis

The *Residential Tenancy Act* states that where a party causes another to suffer damages as a result of failing to comply with the *Act* or the tenancy agreement, the party may be ordered to pay compensation to the aggrieved party. However, in order to be successful, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, the tenants claim damages for loss of use of the rental unit due to a mold infestation that caused the tenants to become ill. However, there is no evidence of that. The only medical information provided by the tenants is a Record stating that the tenant complained of vague symptoms, and the doctor concluded that if the tenant thinks she suffers effects from mold, the tenant should move out. That is not evidence that any illness was contributed to mold. The same applies to the tenant's witness, that there is no evidence that any illness suffered was as a result of mold in the rental unit.

I have also considered the testimony of the landlord's contractors and mold specialists who have all testified that the only mold that existed was in the garage which is totally separate and sealed off from the house.

I also consider the testimony of the landlord's contractors and mold specialists who all testified that there was no mold inside the house and that the tenant's photographs depict a dark color on the wood due to rot, and all wood rot was replaced.

I accept that the tenants were inconvenienced by the work that was completed on the rental property, however, I also find that the tenants put up road-blocks by not allowing

contractors into the rental unit or on the property to finish the work, by having a building inspector and Work Safe to attend on the property which caused delay, and have thereby failed to mitigate any loss suffered.

The tenant said throughout the hearing that this was an urgent matter but applied for Summonses to be issued to witnesses, and later abandoned those applications, applied for later adjournment dates to convenience the one witness that the tenants did call, and refused to move out of the rental unit even after being ordered to do so.

The tenants would have me order the tenants to be permitted to stay in the rental unit rent free and have the landlord pay the tenants to live there until the end of the fixed term. I find that to be a ludicrous application, and find that is against all logic, is not supported by the *Act* or the evidence, and is no more or less than an effort by the tenants to extort money from the landlord. There is absolutely no evidence before me to satisfy me that any damage or loss exists, or that the landlord failed to comply with the *Act* or the tenancy agreement; or that the tenants did anything to mitigate any loss suffered. The tenants' application for monetary compensation is dismissed.

With respect to the tenants' application for monetary compensation for the cost of emergency repairs, I have reviewed the tenants' list and I am not satisfied that any of those items qualify as emergency repairs, and the tenants' application is dismissed.

Since the tenancy has ended, and the landlord has an Order of Possession of the rental unit, I dismiss the tenants' applications for an order that the landlord make emergency repairs for health or safety reasons; and the application for an order that the landlord make repairs to the unit, site or property; and the application for an order reducing rent for repairs, services or facilities agreed upon but not provided.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 11, 2015

Residential Tenancy Branch

